IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 876 OF 1990

Shri Sahadu Rambhau Belhekar
Age 32 yrs. Occ: Service
Residing at "Shiv Darshan Colony",
Mohannagar, Chinchwad, Pune - 411 019 ..Appellant
Vs.
The State of Maharashtra and ors. ..Respondents

Smt. B.P. Jakhade, Advocate appointed for appellant.
Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 1 & 2, 2007.

ORAL JUDGMENT:

1. This appeal filed under Section 374 of Cr.P.C. arises from the order of conviction and sentence passed on 30/11/1990 by the learned Additional Sessions Judge, Pune in Sessions Case No. 55 of 1989. In the said case four accused were put on trial for the offences punishable under Sections 302 and 504 read with Section 34 of IPC. All the accused came to be acquitted for the offences they were charged, however, the present appellant-original accused no.1 has been convicted for the offence punishable under Section 304 Part II of IPC on the ground that deceased Shantaram died a homicidal death and on account of the

injury caused to him by accused no.1 with a spade which the accused no.1 had hit on the head of Shantaram during the incident that had taken place on 1/8/1988 between 8.30 p.m. to 9.00 p.m. and just opposite the house of the accused nos.1 and 2. His bail was continued by this court when the appeal was admitted on 12/12/1990 but on fresh bonds.

2. As per the prosecution, deceased Shantaram Kambale was a resident of Ruston Colony at Chinchwad and his brother Madhukar Kambale was residing in Shivdarshan Colony, Chinchwad. On 1/8/1988 Madhukar had gone to the house of Shantaram at about 4.45 p.m. and informed him that the accused no.1 who was residing in his chawl had constructed a latrine in front of his house and because of the same he was put to inconvenience. Shantaram, therefore, accompanied Madhukar to see the W.C. block constructed by the accused. In the meanwhile the Municipal Corporation Officials had paid a visit to the chawl and called upon the accused no.1 to demolish the W.c. as it was on public place and was an obstruction to the neighbours. When Shantaram came out of his brother's house, accused no.1 called Shantaram in front of his

house. Shantaram believed that accused no.1 was calling him for some amicable settlement and, therefore, he went to the house of accused no.1 where accused no.1 started abusing Shantaram. At that time accused nos.2 to 4 were present and two of them caught hold of Shantaram and accused no.1 gave a blow with spade on his head and his shoulder. This incident was witnessed by Shri Bhagwat and Vanita, wife of Madhukar and other neighbours. On receiving the injury, Shantaram fell down and, therefore, he was taken by a rickshaw to the Municipal Hospital at Chinchwad. Dr. Ramesh Kambale (PW 6) gave immediate treatment i.e. dressed the head injury and along with the police yadi (Exh.28) Shantaram was sent to the Sassoon Hospital. Dr.Arvind Deshpande (PW 5) admitted Shantaram at Sasoon Hospital and after some time he noticed that Shantaram started becoming paralytic on half side. An offence was registered initially under C.R. No.362 of 1988 under Sections 324, 323, 504 read with Section 34 of IPC. On the next day the panchanama of the scene of offence was drawn. The condition of Shantaram later on started deteriorating and he died at Sassoon Hospital on 16/8/1988. The offence registered was amended and changed to Section 302 of IPC. Accused

no.1 was taken in custody on 24-8-1988 and thereafter other three accused were also taken in custody one after another. On completion of the investigation, charge-sheet came to be filed and the case was committed to the Sessions Court for trial. Charge was framed on 17/8/1990.

3. The prosecution examined in all 13 witnesses and three of them were doctors. While Shantaram was undergoing treatment, his statement was recorded in the medical papers as well as by P.W.10 Shri A.E. Abdule. The statements of the accused under Section 313 of Cr.P.C. were also recorded. PW 1 Dr.S.D. Nanandkar had performed the post mortem between 10.20 a.m. to 12.00 noon on 16/8/1988. The dead body was identified by police constable Mahashabde. Dr. Nanandkar stated that the dead person was admitted in the Sassoon Hospital earlier and he was about 35 years of age. On external examination of the dead body he noticed the following injuries:-

(a) Stitched surgical incised wound seen over fronto pariatal region of the scalp (for cranieotomy), slightly curved at centre

starting from approximately 8 cm. above and behind nasal bridge reaching the vertex region and again passing on right side (as shown in figure) (The evidence of healing present and edges red green) to a point 6 cm above right ear above right ear tragus total stitches 15 length approximately 16.5 cm. The approximately centrer vertical part of size 3.8 - 0.5 cm. bone deep is curved and slightly irregular) edges thickened and greenish reddish yellow in colour, stitched (3 stitches) healing present (old C.L.W. included in surgical incision).

(b) Abrasion right lower skin of tibiadark - brown scab present size 2 x 1 cm.

(c) Small multiple abrasion with healing on anterial part of left knee, total No.4, sizes 0.4 x 2 to 1.0.4 cm.

(d) Small multiple abrasion with healing seen on anterial of right knee. No. 5 sizes 0.7 x 0.3 to 1x0.5 cm.

(e) Injection marks right elbow and back (L.2.3) region (I.V. and L.P. respectively).

(f) On palpation I noticed compound communited fractures of fronto pariato temporal (right region) of the skull vault.

. The internal injuries noticed by him were mentioned in column 19 of the post mortem and the same were as under:-

(a) Both parietal frontal right temporal regions contused and dark reddish brown, rest as per Sr.No.17.

(b) Skull shown compound communited fractures of fronto parieto temporal region of skull vault (main part on Rt side). Approximately in the vertical and right side region area oval size approximately 9 x 6 cm total fracture line irregular edges dark reddish brown. Central piece removed stitches

present.

(c) Both parietal and right temporal regions show extradural haematoma about 50 ml. clots dark and brown. Membranes congested. Oedema present. Weight of the brain 1380 grams.

. The cause of death as per Dr.Nanandkar was "shock due to fracture of skull bone with intra cranial haemorrhage associated with septicemia". He prepared the post mortem report at Exh.18. He further stated that the external injury no.1 with the internal damages is possible because of the blow given by Article No.3 (spade) and the injury no.1 with internal damages was sufficient in the ordinary course to cause the death. As the injury no.1 was on scalp, it is tough and hence bleeding is in the form of oozing rather than free flow and hence blood clots collects gradually and the internal damages are not possible to judge from the external damages. He also stated that because of the said blow, it was not necessary that patient would become unconscious immediately and it would depend on the general condition of the patient.

On the nature of injury no.1, he was not able to give exact information but stated that mostly the nature of said injury might be contused lacerated wound and was possible because of forceful, hard and blunt impact. He denied the suggestion that the said injury no.1 was possible because of forceful impact and single injury on the skull was not possible because of fall.

4. The evidence of PW 1 clearly proved that Shantaram died on account of the injury he had received on his scalp in the incident and thus his death was homicidal. The trial Court has acquitted accused nos.2 to 4 from the offences punishable under Sections 302 and 504 read with Section 34 of IPC by holding that the injury caused on the scalp of deceased Shantaram was not attributable to any one of them. Though it was the case of the prosecution that these three accused i.e. accused nos.2 to 4 were involved in assaulting Shantaram during the incident, the trial Court has held that the injury was caused by the accused no.1 - present appellant alone with the assault of the spade during the incident and Shantaram died on account of the said injury. However, the trial Court has acquitted the accused no.1 for the

offence punishable under Section 302 of IPC and held the accused guilty of the offence punishable under Section 304 Part II of IPC. The State has not filed an appeal against the acquittal of accused no.1 for the offence punishable under Section 302 of IPC and, therefore, the only question that remains for consideration is whether the offence punishable under Section 304 Part II of IPC has been proved beyond reasonable doubt by the prosecution against the accused no.1 on the basis of the evidence on record.

5. Mrs.Jakhade, the learned Advocate appearing for the appellant - accused no.1 at the first instance referred to the statement of the deceased Shantaram recorded by PW 10 Asaraji Eknath Abdule, Police Inspector who went to Sasoon Hospital and recorded Shantaram's statement at Exhibit 37. It was contended by her that at one place Shantaram stated "Sahadu gave a blow with spade on my head and shoulder" and subsequently in the very same statement towards the end it is recorded, "Sahadu Belhekar gave blows to me on my head and shoulder". It was pointed out that the words "by spade" are missing from the second statement and, therefore, the statement at Exhibit 37 was

required to be discarded. These submissions do not impress me and the statement at Exhibit 37 cannot be read in bits and pieces. When Shantaram stated that the accused Sahadu gave him a blow by spade on his head, his subsequent reference to the blow cannot be referred to any other blow without a spade. Even otherwise there are five eye witnesses to the incident viz. PW 2 - Vishwas Gadhave, PW 3 - Atmaram Waghmode, PW 4 - Vanita, wife of Madhukar Kamble, PW 7 - Madhukar Kamble (brother of the deceased and complainant and PW 9 - Shridhar Bhagwat. Out of these five eye witnesses, no doubt Vanita and Madhukar are the family members of the deceased but other three witnesses i.e. PW 2, PW 3 and PW 9 are the next door neighbours of the accused no.1 and complainant - Madhukar. If the testimony of these three witnesses supports the evidence of PW 4 Vanita and PW 7 Madhukar, there would be no reason to discard these two family members of the deceased as reliable eye witnesses to the incident.

6. It is also pertinent to note that the prosecution has proved the recovery of the spade through the evidence of PW 8 - Mohan Rokade who was a

panch witness. He stated that while the accused was in police custody on 24/8/1988 he was called at about 10-15 a.m. as a panch by the police and the other panch was Kalbhor. In their presence the accused no.1 stated that he was willing to produce the spade concealed by him in the sand from the place near his house and accordingly memorandum of panchanama was drawn at Exhibit 33. It was signed by both the witnesses. The panchas had accompanied the police party along with the accused no.1 in a private vehicle to Mohan-nagar and the accused no.1 had asked to stop the vehicle near the electric pole. All the members of the team got down from the vehicle and accused no.1 took them near his house where a heap of sand was located and from underneath the same he took out the spade (article no.3). The recovery panchanama was drawn and signed by both the panchas (Exhibit 33).

. PW 5 Dr. Arvind Deshpande was on emergency duty at 11 p.m. at the Sassoon Hospital on 1-8-1988 and he stated he had admitted Shantaram in his ward when brought by the police. He stated that police wanted to record Shantaram's statement and he had informed them that Shantaram was conscious. He stated

that the injury on Shantaram's head was possible by Article No.3 before the Court. In his cross, he stated that the said injury was not possible because of fall on rough substance. As per him only in exceptional circumstances of fall from high distance, such an injury would be caused. But as stated by PW 1, in such a fall there would be injuries on the other parts of the body as well.

7. The house of PW 3 - Atmaram Waghmode is almost in front of the house of the accused whereas the house of PW 2 - Vishwas Gadhave is located in such a way that from the window of his house the house of the accused is seen. As per the depositions of PW 2 and PW 3 it is clear that opposite the house of each of them an open space of 5 ft. is left and they had constructed an ota in the said open space whereas in front of the house of the accused no.1 ota was not constructed and in the said open space he started constructing a latrine block on 30/7/1988 and the accused nos.3 and 4 were the masons who were engaged in the said construction. The latrine block was put up overnight and on 31/7/1988 it was in almost complete form and was likely to cause inconvenience to

Madhukar as well as PW 3 - Atmaram. On 1/8/1988 PW 3 had seen someone carrying out the finishing work of the latrine block. On receiving complaints from neighbours, the officers of the Municipal Corporation had come to the spot on 1/8/1988 and drew panchanama in respect of the said block. They had informed accused no.1 to demolish the latrine block.

8. PW 7 - Madhukar stated that on 1/8/1988 he was to go to his brother Shantaram and do something about illegal construction that was being done by accused no.1 and accordingly he went to the house of Shantaram and brought him to his house at about 8 p.m. They had meals together and after Shantaram left Madhukar's house, within two-three minutes Madhukar heard the shouts and, therefore, he and his wife Vanita - PW 4 rushed outside. They saw that the deceased was being assaulted by the accused and the deceased moved away from the house of the accused and came on the road and even on the road he was assaulted by the accused. PW 7 Madhukar saw accused no.1 with the spade in his hand and with the said spade the accused no.1 gave a blow on the head of Shantaram. Shantaram started bleeding and he fell on the ground. He and his wife took

Shantaram to the hospital at Chinchwad and thereafter to the Sassoon Hospital in an ambulance. He was admitted in Ward No.9 and thereafter the police came and recorded the statement of Shantaram. At that time Madhukar was outside the ward.

9. PW 2 Vishwas Gadhave stated in his depositions that at about 8 p.m. on 1/8/1988 Shantaram had come to his chawl and went to the house of Madhukar. At about 9 p.m. he heard call given in the name of Dada. Shantaram was also called as Dada. Hence he went near the window and saw that Shantaram was in front of the house of the accused and they were beating him with fist blows. He put on shirt and came out of the house and saw that the accused and Shantaram went towards the road side and the accused were beating Shantaram. Accused no.2, wife of accused no.1, who was standing in front of the door handed over the spade (article no.3) to accused no.1 and accused no.1 gave a blow with the said spade on the head of Shantaram. Thereafter Shantaram fell on the ground. The witness had seen the incident in the tubelight. Thereafter, accused nos.1 and 2 went to their house whereas accused nos.3 and 4 ran away. Madhukar and his wife

Vanita took Shantaram to the hospital in a rickshaw. In his searching cross-examination this witness stated that when he came out of the house he saw that the accused were beating Shantaram and the incident had taken place at about 9 to 9.45 p.m. The accused went beating Shantaram towards the road and nobody tried to intervene. However, Waghmode - PW 3 had tried to intervene along with Madhukar and Vanita but they were not successful. The first incident of beating was at the doorsteps of the accused whereas the second incident of beating in which Shantaram was hit with the spade on his head had taken place on the road a few feet away from the house of the accused (at about 20 to 30 ft. away from the latrine block). He denied the suggestion that he did not see who brought the spade but at the same time he admitted that he could not state as to who asked to bring the spade. PW 3 Atmaram Waghmode also stated that the spade was brought by accused no.2 from the house and handed over to the accused no.1 and he had seen the accused no.1 giving a blow with the spade on the head of Shantaram on the road and he had seen this without about 2-4 minutes of his coming out of the house.

10. It is also clear from the testimony of all these five eye witnesses that accused no.1 had given a single blow and it appears that since Shantaram fell down, the accused nos.1 and 2 returned to their house and accused nos.3 and 4 fled away. It was for these reasons that the trial Court recorded a finding that an offence under Section 302 of IPC was not made out by the prosecution. The incident had taken place without any previous preparations and after Shantaram had taken his meals with his brother Madhukar and had come out of Madhukar's house, he was given a call by accused no.1 and Shantaram had believed that the accused no.1 had called him to discuss about the latrine block. This is clear from Shantaram's statement at Exhibit 37. Shantaram, therefore, went to the house of the accused and he was taken aback by the abuses initially and subsequently the assault on him by the accused. He, therefore, moved away from the house of the accused and came on the road but the accused started chasing him and at that stage the accused no.2 brought a spade from her house and handed over to accused no.1. In turn accused no.1 gave a single blow on the head of Shantaram. As stated earlier, though the State has not filed an appeal

against acquittal under Section 302 of IPC, the prosecution proved its case beyond any reasonable doubt that Shantaram died on account of the head injury he had received at the hands of accused no.1 during the incident and the said injury was caused with a blow of spade by accused no.1.

11. In the premises, this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the learned Addl. Sessions Judge, Pune in Sessions Case No.55 of 1989 is hereby confirmed. The accused shall surrender to his bail bonds to undergo the sentence as awarded by the trial Court.

12. A copy of this order be forwarded to the Sessions Court at Pune and the execution report be submitted to the Registry of this Court within six weeks.

(B.H. Marlapalle,J.)